STATE OF MICHIGAN

COURT OF APPEALS

DORIS L. DUNLAP,

Plaintiff-Appellant,

v

BERNARD DASH, D.O., and COOPER & DASH, P.C.,

Defendants-Appellees,

and

WILLIAM PRECHEL, D.O., and PRECHEL FAMILY CLINIC, P.C.,

Defendants.

UNPUBLISHED
February 24, 2004

No. 243154
Wayne Circuit Court
LC No. 00-023127-NH

Before: Smolenski, P.J. and Saad and Kelly, JJ.

PER CURIAM.

Plaintiff appeals as of right a judgment of no cause for action entered after a jury trial in this medical malpractice case.[1] We affirm.

As her sole issue on appeal, plaintiff argues that the trial court erred in permitting a previously undisclosed witness to testify at trial. We disagree.

We review a trial court's decision whether to allow an undisclosed witness to testify for an abuse of discretion. *Leavitt v Monaco Coach Corp*, 241 Mich App 288, 296; 616 NW2d 175 (2000). An abuse of discretion is found only in extreme cases in which the result is so palpably and grossly violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or the exercise of passion or bias. *Id.*

[1] By stipulation, defendants William Prechel and Prechel Family Clinic, P.C. were dismissed with prejudice.

With regard to witnesses not identified before trial, MCR 2.401(I)(2) provides: "The court *may* order that any witness not listed in accordance with this rule will be prohibited from testifying at trial except upon good cause shown." (Emphasis added). In *Pastrick v General Telephone Co of Michigan*, 162 Mich App 243, 245; 412 NW2d 279 (1987), we held:

> [J]ustice is best served where an unlisted witness can be permitted to testify while the interests of the opposing party are adequately protected. If reasonable conditions can allow the testimony of the undisclosed witness to be admitted without prejudice to the opposing parties, then we see nothing wrong with permitting the witness to testify subject to those conditions. No party is prejudiced and the jury is afforded a fuller development of the facts surrounding the case. [*Id.* at 246.]

Although the witness was not named on defendant's witness list, the witness list adequately identified the witness with the generic phrase "[a]ny and all health care professionals where Plaintiff has treated since 1990." See *Dunn v Lederele Laboratories*, 121 Mich App 73, 88-89; 328 NW2d 576 (1982). Thus, the trial court did not err in its determination that the witness was adequately identified; in so ruling, the trial court stated:

> The ruling of the Court, the woman is a nurse in the doctor's office. The issue here is whether or not the Plaintiff was treated on that date. So, she worked in the office on that date. She can testify, but I anticipate she'll be a very short witness, if she does testify.

In addition, plaintiff was not unfairly prejudiced by the trial court's decision to admit the witness's testimony. Plaintiff's counsel, who was allowed to interview the witness before she testified, conducted an effective cross-examination. The witness's testimony was short, comprising only eight pages of a 418 page trial transcript. Moreover, she was not a medical expert, but rather, an eyewitness to a disputed event. Her testimony simply corroborated defendant's own statement that he did not examine plaintiff on her last visit. The witness also confirmed information regarding defendant's examination policies. By limiting the witness's testimony and giving plaintiff an opportunity to interview her before she testified, the trial court adequately protected plaintiff's rights, particularly given the nature of the testimony. Therefore, the trial court did not abuse its discretion in admitting the witness's testimony.

Affirmed.

/s/ Michael R. Smolenski
/s/ Henry William Saad
/s/ Kirsten Frank Kelly